

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ANDREW LOBO,

Plaintiff,

v.

**CORRECTIONS OFFICER TUYEN TU,
SARGENT DAVID BOWMAN,
CHRISTINE POPOFF, JOHN AND JANE
DOES #1-10,**

Defendants.

Case No.: 3:12-cv-00594-HU

**OPINION AND ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS**

SIMON, District Judge.

On June 12, 2012, Magistrate Judge Dennis J. Hubel filed Findings and Recommendations (“F&R”) in this case, Dkt. 22, recommending that Plaintiff’s Motion for Leave to File a Second Amended Complaint, Dkt. 18, should be granted in part and denied in part. In particular, Judge Hubel recommended that the court grant all of Plaintiff’s motion except that the court should deny Plaintiff’s motion with respect to Plaintiff’s proposed addition of the State of Oregon as a Defendant. No party has filed objections.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Hubel’s F&R for clear error on the face of the record. No such error is apparent. Accordingly, the court **ADOPTS** Magistrate Judge Hubel’s Findings and Recommendation, Dkt. 22.

The court notes that Plaintiff filed a Second Amended Complaint, Dkt. 25, on June 25, 2012, after Judge Hubel issued his F&R, but before this court had reviewed them. Because the Plaintiff’s Second Amended Complaint complies with Judge Hubel’s F&R and does not name the State of Oregon as a Defendant, the case may proceed on the Second Amended Complaint, Dkt. 25.

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IT IS SO ORDERED.

Dated this 6th day of July, 2012.

/s/ Michael H. Simon

Michael H. Simon
United States District Judge